

4-9-2013

State v. Trusdall Appellant's Brief Dckt. 40241

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"State v. Trusdall Appellant's Brief Dckt. 40241" (2013). *Idaho Supreme Court Records & Briefs*. 814.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/814

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law.

IN THE SUPREME COURT OF THE STATE OF IDAHO

COPY

STATE OF IDAHO,)	
)	No. 40241
Plaintiff-Appellant,)	
)	Valley Co. Case No.
vs.)	CR-2001-1684
)	
RHONDA TRUSDALL,)	
)	
Defendant-Respondent.)	

BRIEF OF APPELLANT

**APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF VALLEY**

**HONORABLE HENRY R. BOOMER, Magistrate Judge
HONORABLE MICHAEL R. MCLAUGHLIN, District Judge**

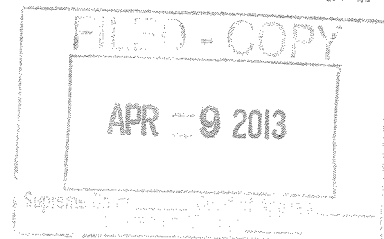
**LAWRENCE G. WASDEN
Attorney General
State of Idaho**

**PAUL R. PANTHER
Deputy Attorney General
Chief, Criminal Law Division**

**LORI A. FLEMING
Deputy Attorney General
Criminal Law Division
P.O. Box 83720
Boise, Idaho 83720-0010
(208) 334-4534**

**ATTORNEYS FOR
PLAINTIFF-APPELLANT**

**JEFFREY E. BROWNSON
Nevin, Benjamin, McKay & Bartlett
303 W. Bannock
Boise, Idaho 83701
(208) 343-1000**



**ATTORNEY FOR
DEFENDANT-RESPONDENT**

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF THE CASE.....	1
Nature of the Case.....	1
Statement of Facts and Course of Proceedings	1
ISSUE.....	4
ARGUMENT	5
The District Court Erred In Reversing Trusdall's DUI Conviction	5
A. Introduction	5
B. Standard Of Review	5
C. A UTV Is A "Motor Vehicle" For Purposes Of Idaho's DUI Statute	6
D. The State Properly Charged Trusdall Under I.C. § 18-8004	14
CONCLUSION.....	20
CERTIFICATE OF MAILING	21
APPENDIX	

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGE</u>
<u>Borely v. Smith</u> , 149 Idaho 171, 233 P.3d 102 (2010).....	5
<u>Idaho Dept. of Health and Welfare v. Doe</u> , 148 Idaho 124, 219 P.3d 448 (2009)	5
<u>La Barge v. State</u> , 116 Idaho 936, 782 P.2d 59 (1989)	15
<u>Losser v. Bradstreet</u> , 145 Idaho 670, 183 P.3d 758 (2008).....	5
<u>Maguire v. Yanke</u> , 99 Idaho 829, 590 P.2d 85 (1978)	7
<u>McLean v. Maverik Country Stores, Inc.</u> , 142 Idaho 810, 135 P.3d 756 (2006) ...	6
<u>Robison v. Bateman-Hall, Inc.</u> , 139 Idaho 207, 76 P.3d 951 (2003)	6
<u>State v. Baer</u> , 132 Idaho 416, 973 P.3d 768 (Ct. App. 1999)	9
<u>State v. Barnes</u> , 133 Idaho 378, 987 P.2d 290 (1999)	passim
<u>State v. Burnight</u> , 132 Idaho 654, 978 P.2d 214 (1999)	6
<u>State v. Callaghan</u> , 143 Idaho 856, 153 P.3d 1202 (Ct. App. 2007)	15
<u>State v. Doe</u> , 147 Idaho 326, 208 P.3d 730 (2009)	6
<u>State v. Escobar</u> , 134 Idaho 387, 3 P.3d 65 (Ct. App. 2000)	6
<u>State v. Forbes</u> , 152 Idaho 849, 275 P.3d 864 (2012)	11
<u>State v. Gamino</u> , 148 Idaho 827, 230 P.3d 437 (Ct. App. 2010)	14
<u>State v. Gilbert</u> , 112 Idaho 805, 736 P.2d 857 (Ct. App. 1987)	15
<u>State v. Hellickson</u> , 135 Idaho 742, 24 P.3d 59 (2001)	15
<u>State v. Knott</u> , 132 Idaho 476, 974 P.2d 1105 (1999)	7
<u>State v. Locke</u> , 149 Idaho 641, 239 P.3d 34 (Ct. App. 2010)	6
<u>State v. Martinez</u> , 122 Idaho 158, 832 P.2d 331 (Ct. App. 1992)	7
<u>State v. Martinez</u> , 126 Idaho 801, 891 P.2d 1061 (Ct. App. 1995)	9

<u>State v. Payan</u> , 132 Idaho 614, 977 P.2d 228 (Ct. App. 1998)	15
<u>State v. Phillips</u> , 117 Idaho 23, 784 P.2d 353 (Ct. App. 1989)	15, 17
<u>State v. Pina</u> , 149 Idaho 140, 233 P.3d 71 (2010)	6
<u>State v. Rhode</u> , 133 Idaho 459, 988 P.2d 685 (1999)	6
<u>State v. Thompson</u> , 140 Idaho 796, 102 P.3d 1115 (2004)	5
<u>State v. Vetsch</u> , 101 Idaho 595, 618 P.2d 773 (1980)	15, 17
<u>State v. Yager</u> , 139 Idaho 680, 85 P.3d 656 (2004)	14
<u>Stonecipher v. Stonecipher</u> , 131 Idaho 731, 963 P.2d 1168 (1998)	18
<u>United States v. Batchelder</u> , 442 U.S. 114 (1979)	15
<u>Verska v. St. Alphonsus Regional Medical Center</u> , 151 Idaho 889, 265 P.3d 502 (2011)	6

STATUTES

I.C. § 18-8004	passim
I.C. § 49-107	8
I.C. § 49-122	14
I.C. § 49-123	passim
I.C. § 49-426	10, 14, 19
I.C. § 49-501	10
I.C. § 67-7101	14
I.C. § 67-7109	17
I.C. § 67-7110	17
I.C. § 67-7114	passim
I.C. § 67-7122	10

OTHER AUTHORITIES

1999 Idaho Sess. Laws Ch. 359.....	18
2008 Idaho Sess. Laws, Ch. 198, § 4.....	11
2B Sutherland Statutory Construction § 51:2 (7 th ed. 2012).....	7

STATEMENT OF THE CASE

Nature of the Case

The state appeals from the district court's appellate decision that reversed the denial of a motion to dismiss and vacated the withheld judgment entered upon Rhonda Trusdall's conditional guilty plea to misdemeanor DUI.

Statement of Facts and Course of Proceedings

On June 25, 2011, Trusdall operated a 2006 Polaris Ranger utility type vehicle ("UTV") in a church parking lot while under the influence of alcohol. (R., Vol. I, p.3.) An officer stopped Trusdall after he observed her "spinning circles" and "throwing up dust and gravel" in the parking lot. (R., Vol. I, p.3; Vol. II, pp.43, 62.) There were six children in the UTV with Trusdall, none of whom were wearing helmets. (R., Vol. I, p.3; Vol. II, p.62.) While speaking with Trusdall, the officer could smell the odor of an alcoholic beverage on her breath. (R., Vol. I, p.3.) He also observed a half-empty container of beer in the cup holder of the UTV. (R., Vol. I, p.3.) Trusdall failed field sobriety tests and a breath test showed she had a B.A.C. of .169/.164. (R., Vol. I, p.3.)

The state charged Trusdall with DUI in violation of I.C. § 18-8004(1)(a), transporting an open container, injury to children and failure to carry a driver's license. (R., Vol. I, pp.1-2.) Trusdall filed a motion to dismiss, arguing she could not be prosecuted for DUI because a UTV is not a "motor vehicle" for purposes of I.C. § 18-8004 and, alternatively, because there is a more specific statute, I.C. § 67-7114, that addresses intoxicated operators of UTVs. (R., Vol. I, pp.5-7; Vol. II, pp.62-71.) At the state's request, the magistrate permitted the state to file an

amended complaint charging Trusdall in the alternative with DUI in violation of I.C. § 18-8004 and with operating a UTV while under the influence of alcohol in violation of I.C. § 67-7114.¹ (R., Vol. I, pp.10, 14-24.) After a hearing, the magistrate denied Trusdall's motion to dismiss, ruling that the state properly charged Trusdall with DUI under I.C. § 18-8004. (R., Vol. II, pp.43-46.) Trusdall filed a motion for reconsideration (R., Vol. I, pp.27-36), but it does not appear from the record that the magistrate ever ruled upon that motion. Trusdall thereafter entered conditional guilty pleas to DUI in violation of I.C. § 18-8004 and to transporting an open container; the state dismissed the remaining charges and Trusdall reserved the right to appeal the denial of her motion to dismiss. (R., Vol. I, pp.39-41, 45.) The magistrate entered an order withholding judgment (R., Vol. I, pp.41-42), from which Trusdall timely appealed (R., Vol. I, pp.46-48).

On appeal, the district court concluded that a UTV is not a "motor vehicle" for purposes of I.C. § 18-8004. (R., Vol. I, pp.53-56.) The court also concluded that, because I.C. § 67-7114 specifically criminalizes operating an all-terrain vehicle while intoxicated, the prosecutor had no discretion to charge Trusdall under I.C. § 18-8004. (R., Vol. I, pp.56-59.) The court therefore reversed the magistrate's decision and remanded the case with instructions that Trusdall's

¹ The amended complaint also charged reckless driving, malicious injury to property, transporting an open container, and six counts each of injury to child and permitting a person under 18 to ride upon a UTV without a helmet. (R., Vol. I, pp.15-24.)

guilty pleas be withdrawn and that the charges be dismissed. (R., Vol. I, p.59.)

The state timely appealed. (R., Vol. I, pp.61-64.)

ISSUE

Did the district court err when it reversed the magistrate's order denying Trusdall's motion to dismiss on the bases that (1) a UTV is not a "motor vehicle" for purposes of Idaho's DUI statute, and (2) Trusdall's conduct of operating a UTV while intoxicated was governed exclusively by I.C. § 67-7114?

ARGUMENT

The District Court Erred In Reversing Trusdall's DUI Conviction

A. Introduction

The district court reversed the magistrate's order denying Trusdall's motion to dismiss on two independent bases. First, it concluded that a UTV is not a "motor vehicle" for purposes of I.C. § 18-8004. (R., Vol. I, pp.55-56.) Second, it concluded that Trusdall's conduct of operating a UTV while intoxicated was governed exclusively by I.C. § 67-7114 and, as such, the prosecutor lacked discretion to charge Trusdall under I.C. § 18-8004. (R., Vol. I, pp.56-59.) The district court erred. Correct application of law to the facts of this case supports the magistrate's determinations that a UTV is a "motor vehicle" for purposes of Idaho's DUI statute and that Trusdall was properly charged with DUI under I.C. § 18-8004.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision to determine whether it correctly decided the issues presented to it on appeal." Borely v. Smith, 149 Idaho 171, 176, 233 P.3d 102, 107 (2010) (citing Idaho Dept. of Health and Welfare v. Doe, 148 Idaho 124, 126, 219 P.3d 448, 450 (2009); see also Losser v. Bradstreet, 145 Idaho 670, 183 P.3d 758 (2008)).

The interpretation and construction of a statute present questions of law over which the appellate court exercises free review. State v. Thompson, 140

Idaho 796, 798, 102 P.3d 1115, 1117 (2004); State v. Barnes, 133 Idaho 378, 380, 987 P.2d 290, 292 (1999).

C. A UTV Is A “Motor Vehicle” For Purposes Of Idaho’s DUI Statute

The objective of statutory interpretation is to give effect to legislative intent. State v. Pina, 149 Idaho 140, 144, 233 P.3d 71, 75 (2010); Robison v. Bateman-Hall, Inc., 139 Idaho 207, 210, 76 P.3d 951, 954 (2003). Because “the best guide to legislative intent” is the words of the statute, the interpretation of a statute must begin with the literal words of the statute. State v. Doe, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). Where the statutory language is unambiguous, a court does not construe it but simply follows the law as written. McLean v. Maverik Country Stores, Inc., 142 Idaho 810, 813, 135 P.3d 756, 759 (2006); see also State v. Locke, 149 Idaho 641, 642, 239 P.3d 34, 35 (Ct. App. 2010) (citing State v. Rhode, 133 Idaho 459, 462, 988 P.2d 685, 688 (1999); State v. Burnight, 132 Idaho 654, 659, 978 P.2d 214, 219 (1999); State v. Escobar, 134 Idaho 387, 389, 3 P.3d 65, 67 (Ct. App. 2000)) (where language of statute is plain and unambiguous, appellate court must give effect to statute as written, without engaging in construction). Thus, if the plain language of a statute is capable of only one reasonable interpretation, it is the Court’s duty to give the statute that interpretation. Verska v. St. Alphonsus Regional Medical Center, 151 Idaho 889, 895-96, 265 P.3d 502, 508-09 (2011) (disavowing cases with language that Court might not give effect to unambiguous language of statute if such was “palpably absurd”).

Trusdall drove a Polaris Ranger UTV in a public parking lot while having a B.A.C. of .169/.164. (R., Vol. I, p.3; Vol. II, p.43.) The state charged her with DUI in violation of I.C. § 18-8004(1)(a), which states in relevant part:

It is unlawful for any person who is under the influence of alcohol ... or who has an alcohol concentration of 0.08 ... or more, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a **motor vehicle** within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

(Emphasis added). The term “motor vehicle” is not defined in I.C. § 18-8004 or elsewhere in Title 18 of the Idaho Code. In State v. Barnes, 133 Idaho 378, 381, 987 P.2d 290, 293 (1999), however, the Idaho Supreme Court indicated that, for purposes of I.C. § 18-8004, a “motor vehicle” is one that meets the statutory definition of “motor vehicle” set forth in I.C. § 49-123(2)(g).² Pursuant to that statute, a “motor vehicle” is defined as:

² Ordinarily, statutory definitions are “limited to the same title, chapter or act” of the statutory scheme in which they appear. State v. Knott, 132 Idaho 476, 479, 974 P.2d 1105, 1108 (1999) (citing Maguire v. Yanke, 99 Idaho 829, 836, 590 P.2d 85, 92 (1978)); see also State v. Martinez, 122 Idaho 158, 161 n.3, 832 P.2d 331, 334 n.3 (Ct. App. 1992) (“[S]tatutory provisions defining terms generally only establish what such terms mean where they appear in the same act; they do not purport to prescribe what meanings shall attach to those terms for all purposes and in all contexts.” (Citations omitted)). An exception to this rule exists, however, where the statutes at issue pertain to the same subject matter. Martinez, 122 Idaho at 161 n.3, 832 P.2d at 334 n.3; see also 2B Sutherland Statutory Construction § 51:2 (7th ed. 2012) (“Unless context indicates otherwise, courts construe words or phrases from a prior act on the same subject in the same sense.”). Applying these principles in Knott, *supra*, the Idaho Supreme Court specifically rejected an argument that “the definitions found in Title 49 do not apply to a DUI charge in Title 18,” noting, *inter alia*, that Idaho’s DUI provision was previously codified in Title 49, that “[t]here is a close interaction between the Title 49 statutes and ... the DUI provision found in section 18-8004,” and that “[t]he statutes relate to the same subject matter and on occasions have been addressed by the legislature at the same time.” 132 Idaho at 478-80, 974 P.2d at 1107-09.

Every vehicle which is self-propelled, and for the purpose of titling and registration meets federal motor vehicle safety standards as defined in section 49-107, Idaho Code. Motor vehicle does not include vehicles moved solely by human power, electric personal assistive mobility devices and motorized wheelchairs or other such vehicles that are specifically exempt from titling or registration requirements under title 49, Idaho Code.

I.C. § 49-123(2)(g).

The state conceded below that the UTV Trusdall was operating while intoxicated (and UTVs in general) did not meet the federal motor vehicle safety (“FMVS”) standards defined in I.C. § 49-107.³ (See R., Vol. II, p.43 (“The parties do not dispute that UTV’s are not regulated by FMVS standards.”).) The district court found this fact dispositive, concluding that because the UTV Trusdall was operating did not meet FMVS standards, it was not a “motor vehicle” for purposes of Idaho’s DUI statute. (R., Vol. I, pp.55-56.) The district court’s interpretation is erroneous because it is both contrary to the plain language of I.C. § 49-123(2)(g) and renders portions of that statute meaningless.

The plain language of I.C. § 49-123(2)(g) defines a “motor vehicle” as “[e]very vehicle which is self-propelled.” Although the statute also imposes a requirement that motor vehicles meet FMVS standards, such requirement by its plain terms applies only “for the purpose of titling and registration.” Nowhere in the statute is there any indication that the legislature intended to limit the definition of “motor vehicles,” for purposes other than titling and registration, to

³ Idaho Code § 49-107(5) defines FMVS standards as “those safety standards established by the national highway traffic safety administration, under title 49 CFR part 500-599, for the safe construction and manufacturing of self-propelled motorized vehicles for operation on public highways. ...”

only those vehicles that are self-propelled **and** meet FMVS standards. Had the legislature so intended, it could easily have done so by eliminating the “for the purpose of titling and registration” language and expressly defining the term “motor vehicle” as simply: “Every vehicle which is self-propelled and meets federal motor vehicle safety standards as defined in section 49-107, Idaho Code.” That the legislature chose not to do so and, instead, included the “for the purpose of titling and registration” language is evidence of the legislature’s intent that the requirement of compliance with FMVS standards applies only in the context of motor vehicle titling and registration; it does not affect the determination of whether a “self-propelled vehicle” is a “motor vehicle” in any other context, including for purposes of Idaho’s DUI statute.

It is a fundamental principle of statutory interpretation that a statute must be interpreted so that effect is given to its every word and clause. State v. Baer, 132 Idaho 416, 417-18, 973 P.3d 768, 769-70 (Ct. App. 1999). As demonstrated above, if the legislature intended by the language of I.C. § 49-123(2)(g) to define “motor vehicles” in general as only those vehicles that are self-propelled **and** meet FMVS standards, there would be no need for the “for the purpose of titling and registration” language contained in the statute. Clearly, it could not have been the legislature’s intent that the “for the purpose of titling and registration” language be mere surplusage. To the contrary, this Court must assume that the legislature had a purpose in using the language it did. State v. Martinez, 126 Idaho 801, 803, 891 P.2d 1061, 1063 (Ct. App. 1995).

That the legislature did not intend to restrict the definition of “motor vehicles,” for purposes other than titling and registration, to only those self-propelled vehicles that meet FMSV standards is further evidenced by the second sentence of I.C. § 49-123(2)(g), which specifically excepts from the definition of “motor vehicle” only those “vehicles moved solely by human power, electric personal assistive mobility devices and motorized wheelchairs or other such vehicles that are specifically exempt from titling or registration requirements under title 49, Idaho Code.” Pursuant to I.C. § 49-426(2), UTVs are exempt from registration requirements only “if they are being used exclusively in connection with agricultural, horticultural, dairy and livestock growing and feeding operations or used exclusively for snow removal purposes.” Otherwise, a UTV “used off public highways, on highways located on state lands or federal lands which are not part of the highway system of the state of Idaho or on highways” must be registered. I.C. § 67-7122 (cross-referencing I.C. § 49-426). In addition, regardless of the manner in which they are used, all UTVs (except those having certain engine specifications not at issue in this case) must be titled. I.C. § 49-501(1), (2)(a), and (4). Because UTVs are self-propelled and, as a general rule, are **not** “exempt from titling or registration requirements under title 49, Idaho Code,” they are “motor vehicles” as defined by the plain language of I.C. § 49-123(2)(g). The district court’s interpretation to the contrary is erroneous.

Because the plain language of I.C. § 49-123(2)(g) unambiguously evidences the legislature’s intent to include UTVs in the definition of “motor

vehicles,” this Court need not engage in statutory construction. Even assuming an ambiguity in the statute, however, the same result obtains from statutory construction. The literal words of I.C. § 49-123(2)(g), its legislative history and its interplay with other related provisions of Title 49 all reflect the legislature’s intent that a UTV is a “motor vehicle” for purposes of Idaho’s DUI statutes. See, e.g., State v. Forbes, 152 Idaho 849, 851, 275 P.3d 864, 866 (2012) (appellate court construing ambiguous statute must ascertain and give effect to legislative intent by examining not only the literal words of the statute, “but also the context of those words, the public policy behind the statute, and its legislative history”).

Before July 2008, Idaho Code § 49-123(2)(g) defined the term “motor vehicle” as: “Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires but not operated upon rails, except vehicles moved solely by human power, electric personal assistive mobility devices and motorized wheelchairs.” I.C. § 49-123(2)(g) (2007). In 2008, the Idaho Department of Transportation sponsored a bill to amend the statutory definition of “motor vehicle” to its current form, which both includes the requirement that “for the purpose of titling and registration” a “motor vehicle” meet “federal motor vehicle safety standards as defined in section 49-107, Idaho Code,” and specifically excepts from the definition of “motor vehicle” only those vehicles “moved solely by human power” or that “are specifically exempt from titling or registration requirements under title 49, Idaho Code.” See 2008 Idaho Sess. Laws, Ch. 198, § 4 at 636-38; Hearings on H.B. 365 (RS 17359C1) Before the House Transp. and Defense Comm. and the Senate

Transportation Comm., 59th Legis., 2d Reg. Sess. (Idaho 2008).⁴ According to the Statement of Purpose, the reason for the amendment was to:

incorporate the “federal motor vehicle safety standards” (FMVSS) as prescribed by the National Highway Traffic Safety Administration (NHTSA) into Idaho’s vehicle registration code, **clearly defining motor vehicles for the purpose of registration and titling, and which vehicles are allowed to be operated on public roads.** Manufacturers who produce vehicles made for use in the United States are required by federal law to certify to NHTSA, that their vehicles comply with the FMVSS.

More frequently, vehicles are created or imported from other countries that were not manufactured to comply wit[h] federal safety standards to be operated on public roads in the U.S. Typically they were not built with the intent to import them to the U.S. **The authority is needed in Idaho code to prohibit the registration and use of public roads for these types of vehicles.**

RS 17359C1 Statement of Purpose (emphases added). Given this stated purpose, it is clear that the legislature’s intent in requiring compliance with FMVS standards was only to limit the types of vehicles that may be titled and registered for use on Idaho’s public roads, not to alter the definition of “motor vehicle” for any other purpose, including what types of vehicles qualify as “motor vehicles” for purposes of Idaho’s DUI statute.

This intent is further reflected in the minutes of the many house and senate committee meetings that addressed the proposed amendment of I.C. § 49-123(2)(g) to require FMVS standard compliance “for the purpose of titling and registration.” At those meetings, the ITD representative who proposed the amendment repeatedly explained the amendment was necessary to “clearly

⁴ For ease of reference, the minutes of the relevant committee meetings, as well as the Statement of Purpose for RS 17359C1, are appended to this brief.

define that only vehicles which are certified to meet the [FMVS] standards will be allowed registration to operate on Idaho's public roads." Senate Transp. Comm. Minutes of March 6, 2008; see also House Transp. and Defense Comm. Minutes of January 16, 2008 (requiring compliance with FMVS standards will "prevent the registration of unsafe vehicles or for those vehicles that do not or cannot meet safety standards"); House Transp. and Defense Comm. Minutes of January 24, 2008 (amendment "prohibits registration of unsafe vehicles that cannot or do not meet the [FMVS] Standards"). When asked specifically about whether the amendment would affect whether ATVs could be registered, the ITD representative represented that it would not. House Transp. and Defense Comm. Minutes of January 16, 2008; see also Senate Transp. Comm. Minutes of March 6, 2008 ("This legislation does not impact the current exception of the registration of all-terrain vehicles (ATVs)."). Most tellingly, the ITD representative recognized that amending the statute to define "motor vehicles" as those vehicles that meet FMVS standards might "put law enforcement in the position of not being able to enforce DUI's." House Transp. and Defense Comm. Minutes of January 28, 2008. The "for the purpose of titling and registration" language of the proposed amendment was specifically chosen to avoid that result. *Id.*

The plain language and legislative history of I.C. § 49-123(2)(g) clearly reflect the legislature's intent to broadly define "motor vehicle" as including "[e]very self-propelled vehicle," except "for the purpose of titling and registration," in which case the vehicle must also meet FMVS standards. Because a UTV is a self-propelled vehicle, it is necessarily a "motor vehicle" under I.C. § 49-123(2)(g)

and, thus, also a “motor vehicle” for the purpose of I.C. § 18-8004. Such interpretation is not only mandated by the literal language and legislative history of I.C. § 49-123(2)(g), it also finds support in other related provisions of the motor vehicle code.

It is a fundamental tenet of statutory construction that statutes that are *in pari material*, i.e., relating to the same subject, must be construed together to give effect to legislative intent. State v. Yager, 139 Idaho 680, 689-90, 85 P.3d 656, 665-66 (2004); State v. Barnes, 133 Idaho 378, 382, 987 P.2d 290, 294 (1999); State v. Gamino, 148 Idaho 827, 828, 230 P.3d 437, 438 (Ct. App. 2010). Idaho Code § 49-122(8) defines “Utility type vehicle” or “UTV” by cross-reference to I.C. § 67-7101(17), which provides in relevant part: “‘Utility type vehicle’ or ‘UTV’ means any recreational **motor vehicle** other than an ATV, motorbike or snowmobile as defined in this section” (Emphasis added). In addition, Idaho Code § 49-426(3) specifically provides that “[t]he requirements of title 18 ... shall apply to the operation of any all-terrain vehicle, utility type vehicle or motorbike upon highways.” Construing these statutes together with the definition of “motor vehicle” in I.C. § 49-123(2)(g) leaves no room for doubt that the legislature intended UTVs to be included in the definition of “motor vehicle” for purposes of enforcing Idaho’s DUI statute. The district court’s conclusion to the contrary is in error and should be reversed.

D. The State Properly Charged Trusdall Under I.C. § 18-8004

In what appears to be an alternative basis for its order of dismissal, the district court concluded that the prosecution of Trusdall under I.C. § 18-8004 was

barred because another statute, I.C. § 67-7114, specifically criminalizes the operation of UTVs while intoxicated. (R., Vol. I, pp.56-59.) The district court erred. Because the statutes do not conflict, the prosecutor had discretion to charge Trusdall under either I.C. § 18-8004 or I.C. § 67-7114 for her conduct of driving a UTV while intoxicated.

It is established law in Idaho that a prosecutor has broad discretion in determining what charge to file against a defendant, even where the available statutes proscribe the same conduct but provide for different penalties. La Barge v. State, 116 Idaho 936, 939-940, 782 P.2d 59, 62-63 (1989); State v. Vetsch, 101 Idaho 595, 618 P.2d 773 (1980); State v. Payan, 132 Idaho 614, 617, 977 P.2d 228, 231 (Ct. App. 1998); State v. Phillips, 117 Idaho 23, 27, 784 P.2d 353, 357 (Ct. App. 1989); State v. Gilbert, 112 Idaho 805, 736 P.2d 857 (Ct. App. 1987). Criminal statutes do not have to be construed such that there is no overlap or such that the same criminal conduct cannot be punished under different provisions of law. See United States v. Batchelder, 442 U.S. 114, 123-24 (1979); State v. Hellickson, 135 Idaho 742, 745-46, 24 P.3d 59, 62-63 (2001). To the contrary, where criminal conduct is covered by two statutes, and the statutes do not conflict, the state has the discretion to prosecute under either statute. State v. Barnes, 133 Idaho 378, 382, 987 P.2d 290, 294 (1999). Only where a harmonious construction is impossible will the more specific of the two statutes prevail. State v. Callaghan, 143 Idaho 856, 858-59, 153 P.3d 1202, 1204-05 (Ct. App. 2007).

Idaho Code § 18-8004, entitled “Persons under the influence of alcohol, drugs or any other intoxicating substances,” provides in relevant part:

It is unlawful for any person who is under the influence of alcohol, drugs or any other intoxicating substances, or any combination of alcohol, drugs and/ or any other intoxicating substance, or who has an alcohol concentration of 0.08, as defined in subsection (4) of this section, or more, as shown by analysis of his blood, urine, or breath, to drive or be in actual physical control of a motor vehicle within this state, whether upon a highway, street or bridge, or upon public or private property open to the public.

I.C. § 18-8004(1)(a).

Idaho Code § 67-7114, entitled “Operation under the influence of alcohol, drugs or any other intoxicating substance,” provides:

Any person driving or operating a snowmobile, motorbike, utility type vehicle, specialty off-highway vehicle or all-terrain vehicle under the influence of alcohol, drugs or any other intoxicating substance on a public roadway or highway or off-highway shall be guilty of a misdemeanor.

There is no question that I.C. §§ 18-8004 and 67-7114 overlap because both statutes criminalize the operation of a UTV (*i.e.*, a “motor vehicle”) on public roadways while intoxicated. Contrary to the district court’s conclusion, however, the fact that both statutes apply to Trusdall’s conduct in this case does not render them irreconcilable. In fact, the Idaho Supreme Court has already effectively held that the statutes at issue do not conflict and, as such, the decision whether to charge under one statute or the other is a matter of prosecutorial discretion. Barnes, 133 Idaho at 382-84, 987 P.2d at 294-96.

The defendant in Barnes was charged with misdemeanor DUI under I.C. § 18-8004 for operating a snowmobile on a public roadway while intoxicated. Barnes, 133 Idaho at 379-80, 987 P.2d at 291-92. On appeal from his

conviction, Barnes argued that the prosecution under I.C. § 18-8004 was improper because there existed another, more specific statute – at the time, I.C. § 67-7110(2) – that made it an infraction to operate a snowmobile while intoxicated. Barnes, 133 Idaho at 381-82, 987 P.2d at 293-94. The Idaho Supreme Court disagreed and, “[b]ased on the doctrine of *in pari materia*,” held “that driving a snowmobile on a public roadway while intoxicated is covered by both I.C. §18-8004 and I.C. § 67-7110(2), that there is no conflict and that the State had the discretion to prosecute Barnes under either statute.” Barnes, 133 Idaho at 382, 987 P.2d at 294. The Court explained:

In the present case, both I.C. § 18-8004 and I.C. § 67-7110(2) deal with the subject of operating a motor vehicle while intoxicated. However, they are both specific in different aspects; I.C. § 67-7110(2) is specific with respect to the type of motor vehicle being operated by the intoxicated person, *i.e.*, a snowmobile, while I.C. § 18-8004(1)(a) is specific about where the motor vehicle is being operated and what constitutes intoxication. Despite the fact that these statutes can both be considered more specific than the other in certain aspects, they can be construed harmoniously under the facts of this case. Here, Barnes was operating her motor vehicle, a snowmobile, on a public roadway or highway while intoxicated. A snowmobile operator is generally not allowed to operate a snowmobile on a highway or public roadway. See I.C. § 67-7109. Snowmobiles are generally operated on groomed snowmobile trails or other areas which are not highways or public roadways. Thus, because Barnes elected to operate her snowmobile on a highway or public roadway while intoxicated, her actions came within the purview of both I.C. § 67-7110(2) and I.C. § 18-8004(1)(a). The prosecutor therefore had the discretion to charge Barnes under either statute. *State v. Vetsch*, 101 Idaho 595, 596, 618 P.2d 773, 774 (1980); *State v. Phillips*, 117 Idaho 23, 27, 784 P.2d 353, 357 (Ct. App. 1989).

Barnes, 133 Idaho at 382, 987 P.2d at 294.

In concluding its analysis, the Barnes Court reiterated, based upon its reading of the statutes at issue, that “[a] person who elects to operate a

snowmobile on a public roadway is subject to the same rules and law that apply to other operators of motor vehicles on public roadways.” Id. at 384, 987 P.2d at 296. The Court also specifically noted that, in 1999, the “Idaho Legislature amended Chapter 71, Title 67 of the Idaho Code to provide that the operation of a snowmobile or all terrain vehicle under the influence of alcohol, drugs or other intoxicating substance on a public roadway or highway shall be a misdemeanor.” Id. (citing 1999 Idaho Sess. Laws Ch. 359 (House Bill 55, effective July 1, 1999)). The amendment to which the Court was referring was the addition of I.C. § 67-7114, the very statute that is at issue in this case. With respect to that amendment the Barnes Court held:

[T]his enactment does not affect the outcome of the present case. This Court recently held that when the legislature enacts an amendment to an existing statute, it has done so to clarify, strengthen or make a change to an existing statute. See *Stonecipher v. Stonecipher*, 131 Idaho 731, 735, 963 P.2d 1168, 1172 (1998). It is clear that by amending Chapter 71, Title 67 of the Idaho Code, the legislature intended to simply clarify and strengthen this chapter so that there would be no mistake that the operation of a snowmobile on a public roadway or highway while intoxicated results in the same legal consequences as the operation of any other motor vehicle while intoxicated, *i.e.*, a misdemeanor. Thus, the fact that the legislature has clarified the snowmobile statute does not mean that Barnes was improperly charged under I.C. § 18-8004.

Barnes, 133 Idaho at 384, 987 P.2d at 296.

The reasoning and result of Barnes are controlling and compel the conclusion that the prosecutor had discretion to charge Trusdall with DUI under I.C. § 18-8004 in this case. While I.C. §§ 18-8004 and 67-7114 both deal with the subject of operating a motor vehicle on public roadways while intoxicated, they are also both specific in different respects. Barnes, 133 Idaho at 382, 987

P.2d at 294. Idaho Code § 67-7114 is specific with respect to the type of motor vehicle being operated by the intoxicated person, *i.e.*, “a snowmobile, motorbike, utility type vehicle, specialty off-highway vehicle or all-terrain vehicle,” while I.C. § 18-8004(1)(a) is specific about what constitutes intoxication. “Despite the fact that these statutes can both be considered more specific than the other in certain aspects, they,” like the statutes at issue in Barnes, “can be construed harmoniously under the facts of this case.” Barnes, 133 Idaho at 382, 987 P.2d at 294. Like the snowmobile operator in Barnes, Trusdall was operating her motor vehicle, a UTV, on a public thoroughfare (*i.e.*, a church parking lot that the parties below agreed was open to the public) while intoxicated. The state is unaware of any statute expressly prohibiting the operation of a UTV on a public roadway; however, when an individual elects to do so, Idaho Code § 49-426(3) makes clear that “the requirements of title 18” – including, necessarily, the DUI provisions contained therein – “shall apply.” Thus, having chosen to operate her UTV in a church parking lot open to the public while intoxicated, Trusdall, like the snowmobile operator in Barnes, was “subject to the same rules and laws that apply to other operators of motor vehicles on public roadways.” Barnes, 133 Idaho at 384, 987 P.2d at 296. Her conduct fell within the purview of both I.C. § 18-8004(1)(a) and I.C. § 67-7114, neither of which conflicts with the other, and, as such, the prosecutor had discretion to charge her with either crime. Barnes, 133 Idaho at 382-84, 987 P.2d at 294-96.

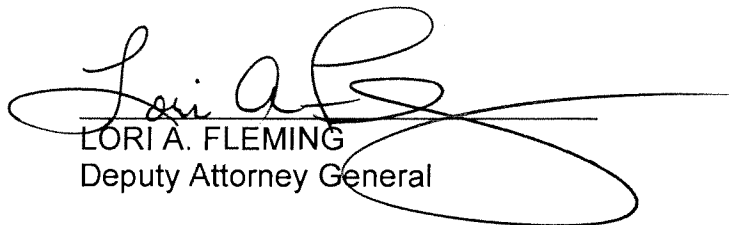
The district court’s conclusion that the prosecutor lacked discretion to charge Trusdall with DUI under I.C. § 18-8004 is contrary both to the reasoning

of Barnes and to principles of statutory construction that require statutes dealing with the same subject matter to be construed harmoniously. While the prosecutor could have charged Trusdall with operating a UTV while intoxicated under I.C. § 67-7114 instead of with DUI under I.C. § 18-8004, he was not required to do so. As noted by the Idaho Supreme Court in Barnes, the intent of the legislature in enacting I.C. § 67-7114 was simply to make clear that “operation of a [UTV] on a public roadway or highway while intoxicated results in the same legal consequences as the operation of any other motor vehicle while intoxicated.” Barnes, 133 Idaho at 384, 987 P.2d at 296. The prosecutor’s decision to charge Trusdall under I.C. § 18-8004 is entirely consistent with this intent. See id. (fact that legislature enacted I.C. § 67-7114 to clarify that operation of snowmobile on public roadway while intoxicated results in same legal consequences as operation of any other motor vehicle while intoxicated did not mean defendant was improperly charged under I.C. § 18-8004). The district court’s opinion to the contrary should be reversed.

CONCLUSION

The state respectfully requests this Court to reverse the district court’s appellate decision and reinstate Trusdall’s DUI and open container convictions.

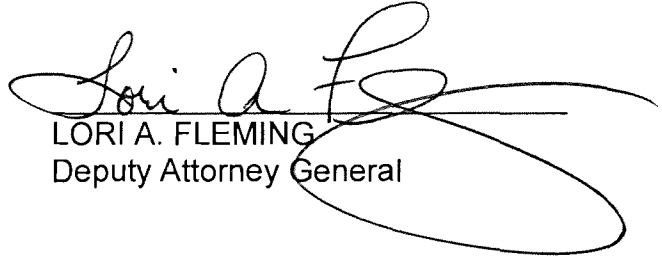
DATED this 9th day of April 2013.


LORI A. FLEMING
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 9th day of April 2013, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

JEFFREY BROWNSON
NEVIN, BENJAMIN, McKAY & BARTLETT
P.O. BOX 2772
BOISE, ID 83701


LORI A. FLEMING
Deputy Attorney General

LAF/pm

APPENDIX

Statement of Purpose / Fiscal Impact

REPRINT

REPRINT

REPRINT

REPRINT

STATEMENT OF PURPOSE

RS 17359C1

This legislation will incorporate the "federal motor vehicle safety standards" (FMVSS) as prescribed by the National Highway Traffic Safety Administration (NHTSA) into Idaho's vehicle registration code, clearly defining motor vehicles for the purpose of registration and titling, and which vehicles are allowed to be operated on public roads. Manufacturers who produce vehicles made for use in the United States are required by federal law to certify to NHTSA, that their vehicles comply with the FMVSS.

More frequently, vehicles are created or imported from other countries that were not manufactured to comply wit federal safety standards to be operated on public roads in the U.S. Typically they were not built with the intent to import them to the U.S. The authority is needed in Idaho code to prohibit the registration and use of public roads for these types of vehicles.

FISCAL NOTE

No fiscal impact.

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: January 16, 2008

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Moyle, Mortimer, Hagedorn, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:** Representative Nonini

GUESTS: See attached sign-in sheet and highlighted presenters below.

**CALL TO
ORDER:** **Chairman Wood** called the meeting to order at 1:30 p.m.

**APPROVAL OF
MINUTES** **Representative Ringo** made a motion to approve the minutes of January 14, 2008 as written. **Motion approved** by voice vote.

Chairman Wood announced that Representative Nonini has a conflicting meeting and is excused from the meeting and that the Leadership is excused to come and go as needed.

Chairman Wood informed the committee that she has received telephone calls from representatives of various groups expressing concerns that the committee is coming "in the back door" to do things regarding ATV's that they don't agree with. She asked that everyone keep an open mind and let the Idaho Transportation Department (ITD) make their presentation.

RS17338 **AMEND LICENSE PLATE FEES ASSESSED UNDER IDAHO CODE 49-450.** Amy Smith, Idaho Transportation Department (ITD), reported this RS will increase the license plate fee from \$3.00 to \$4.00. The cost of manufacturing license plates has continued to increase, especially with the rise in aluminum prices, and the fees have not kept pace. The last time there was an increase was in 1992, from \$2.50 to \$3.00, which allowed for \$0.50 of the license plate fee to go to the Heritage Trust Fund for use of the copyright design provided for in the Idaho Code.

MOTION: **Representative Smith (24)** made a motion to introduce **RS17338** to print.

Representative Smith (24) asked if the \$0.50 fee is off of every license plate or just those with red, white and blue background. **Amy Smith** stated that it is for each plate that utilizes the red, white and blue background. **Representative Ringo** asked about the Fiscal Note and if the potential increase of fees will be eaten up over time. **Amy Smith** said

that the first potential increase of \$256,000.00 will go towards the manufacturing costs of license plates and should sustain further increases if aluminum costs increase over the next few years.

Representative Mortimer asked what the manufacturing costs are today and how much are they in the hole right now. **Amy Smith** stated they are losing \$0.18 per plate. **Representative Mortimer** asked Ms. Smith if she had an idea of what the total amount is. **Amy Smith** reported they produce 800,000 license plates annually so it would be that figure times \$0.18 which calculated to \$144,000.00. **Representative Mortimer** asked Ms. Smith's best guess at what percentage of the potential increase would go towards the overhead of department administrative costs. **Amy Smith** said the fees collected are strictly for the manufacturing and handling of license plates. These are costs from Corrections Industries for their labor, costs for special envelopes to ship license plates to the customer, and license plate shipping costs to those Idaho counties who maintain plates. **Representative Hagedorn** asked if we have a contractual agreement with Correctional Industries and if there is a set figure for them to produce the license plates. **Amy Smith** said there is a contract that establishes the cost per standard license plate; a cost per specialty plates; and costs for the shipping and handling of the license plates. **Representative Hagedorn** asked if all plates were using the red, white and blue background, would we then be \$0.18 in the hole per license plate? It was noted that because of the specialized plates that affects that number so the amount in the hole would probably be less than the \$144,000 figure. It was asked why did we set the increase at \$1.00 versus \$0.25 or another amount? **Amy Smith** said the contract with Correction Industries is set on a sliding scale, so that if aluminum prices go up, Correction Industries can charge more. The department didn't want to come back every year or so and ask for an increase of \$0.25 or \$0.50. **Representative Mortimer** asked if looking at the department's hard costs and soft costs, would it be true the department would be taking money out of the highway department to subsidize the license plate account. **Amy Smith** stated administrative costs don't come out of the license plate account, however, if the license plate account does not have enough money to cover their costs, the state highway department has to come up with the money to cover those costs.

Motion approved by voice vote.

RS17357

SALVAGE VEHICLE PROCESS; BRANDED DECALS FOR SALVAGE VEHICLES; SALVAGE TITLE FEES. **Amy Smith**, ITD reported that currently there is a two (2) step process in dealing with salvage vehicles. This RS establishes a consistent process that eliminates the confusion on which vehicle fits into which one of the current categories and implements a uniform \$15.00 salvage vehicle certificate fee for all salvage vehicles.

MOTION: **Representative Wills** made a motion to introduce RS17357 to print. **Motion approved** by voice vote.

RS17359C1 **INCORPORATION OF THE "FEDERAL MOTOR VEHICLE SAFETY STANDARDS" INTO IDAHO'S VEHICLE REGISTRATION CODE.** **Amy Smith**, ITD said this RS deals with the need to incorporate the "federal motor vehicle safety standards" into Idaho's vehicle registration code and defines which vehicles are allowed to operate on Idaho roads. The manufacturers must certify the vehicles they build and sell comply with the applicable safety standards and it will prevent the registration of unsafe vehicles or for those vehicles that do not or cannot meet safety standards. **Chairman Wood** asked Ms. Smith to refresh the committee about page 6, line 11 as to why mopeds are not required to be titled and if it was because they are not allowed to be on state highways. **Amy Smith** said that is correct, as mopeds typically cannot go very fast. **Representative Hart** stated that he has heard from his constituents that they are worried this RS affects ATV's and asked Ms. Smith to please elaborate on why she said it does not. **Amy Smith** said any reference to ATV's and their registration has been left intact and left alone. **Representative Hart** asked what was the purpose of the added language on page 12, lines 6-8. **Amy Smith** said the department has been encountering almost "kiddie- type" ATV's, some of which are battery operated. The department needed a cut-off level, so it was determined that if a vehicle was smaller than this, then they would not need to be titled. **Representative Hagedorn** asked if this addresses the definition of a public road? **Amy Smith** said this RS does not have a change in that definition, and it is defined according to Idaho Code as noted on page 11, subsection 8, line 46. **Representative Ringo** asked Ms. Smith for clarification on replica vehicles and whether they have to meet the same standards to drive on public roads. **Amy Smith** stated they require that the builder certify that the replica vehicle meets the safety standards that were in place at the time the original vehicle was manufactured.

Representative Smith (24) made a motion to introduce **RS17359C1** to print. **Motion approved** by voice vote.

RS17352C1 **EXPIRATION DATE ON A DRIVER'S LICENSE OR IDENTIFICATION CARD BEYOND EXPIRATION DATE OF ALIEN DOCUMENTATION; ISSUANCE OF FOUR OR EIGHT YEAR IDAHO DRIVER'S LICENSE OR IDENTIFICATION CARD FOR INDIVIDUALS WHOSE LEGAL PRESENCE IN THE UNITED STATES IS ABOUT TO EXPIRE; LIMIT VALIDITY OF A DRIVER'S LICENSE OR IDENTIFICATION CARD WHEN ALIEN DOCUMENTATION ISSUED BY THE UNITED STATES HAS NO EXPIRATION DATE.** Lynn Rhodes, Drivers License Programs Advisor in Drivers Services, ITD briefly reviewed the purpose of the RS, noting that it prevents the expiration date on a drivers license or identification card to extend beyond the lawful presence of an alien in the United States and limits the validity of a drivers license or identification card to one (1) year when alien documentation does not state an expiration date. **Chairman Wood** asked if the gist of the RS is stated on page 7. Lynn Rhodes said yes and added that very similar language is reflected on page 10, subsection 3.

MOTION: **Representative Wills** made a motion to introduce **RS17352C1** to print.
Motion approved by voice vote.

Chairman Wood said that there will be a brief committee meeting on Friday immediately after the House adjourns, unless no meeting is announced on the floor. There is a Joint Meeting with the House Transportation Committee and the Senate Transportation Committee at 1:30 p.m. on Tuesday, January 22, 2008 in the basement of the State Supreme Court Building, and our committee will meet immediately afterwards. The Idaho Transportation Department will be making a presentation at the joint meeting on their budget and the issues their department is facing this year.

ADJOURN: There being no other business before the committee, **Chairman Wood** adjourned the meeting at 2:03 p.m.

Representative JoAn Wood
Chairman

Darlene Reed
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: January 24, 2008

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Moyle, Nonini, Mortimer, Hagedorn, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:**

GUESTS: See attached sign-in sheet and highlighted presenters below.

**CALL TO
ORDER:** Chairman Wood called the meeting to order at 1:34 p.m.

**APPROVAL OF
MINUTES:** **Rep. Ringo** moved to approve the minutes of January 22, 2008 as corrected. **Motion approved** by voice vote.

Rep. Ringo moved to approve the minutes of January 16, 2008 as written. **Motion approved** by voice vote.

Chairman Wood read a letter she was handed from the Idaho Transportation Department (ITD) regarding the credit card fees paid by ITD. In fiscal year 2008 the total credit card fees associated with on-line applications and all other transactions was \$232,300. The department will now pass the credit card fees onto customers if the form of a "convenience fee."

Chairman Wood stated that she is changing the order of the agenda items and will move forward with some bills. She will go back to Mr. Babbitt's presentation, so that a representative from the Governor's office can be present for it.

H 356

EXPANSION OF DRIVERS LICENSE RECIPROCITY; DESTRUCTION OF SURRENDERED LICENSES; MOTORCYCLE REQUIREMENTS REINSTATEMENT REQUIREMENTS FOR TITLE 18. Ed Pemble, ITD reported the primary goal is efficiency for the department. The first proposed change expands drivers license reciprocity for those individuals under 17 who have completed drivers education in other jurisdictions. The change is "United States" jurisdiction and allows those who move to Idaho who have completed drivers education in another U.S. jurisdiction, to not have to retake drivers education here. **Chairman Wood** stated this was a clarification to reflect not only a state, but also U.S. jurisdictions, i.e. Guam.

Mr. Pemble reported the second change addresses the motorcycle endorsement and that individuals who had motorcycles licenses prior to September 1994 had until September 1998 to receive the endorsement without having to take the newly required tests. Individuals now are required to take a knowledge and skills test, or the STAR course to be exempted from the skills test, in order to receive the M endorsement.

Mr. Pemble stated the reinstatement requirements for Title 18 based do not have a huge impact, but the department is wanting to make the language consistent with reinstatement fees.

Mr. Pemble reported the change for the destruction of surrendered licenses will improve efficiency by not retaining licenses because of revocation. There are approximately 20,000 to 30,000 licenses surrendered and currently the licenses are filed away and when that individual reinstates their license the department pulls it and if it is not expired, they return it to the individual. This change will free up employees to meet customer service needs and also save on postage, as approximately one third (1/3) are returned by mail. This change will save the department approximately \$2,500 annually.

Chairman Wood asked if an individual goes to a licensing vendor and asks for a duplicate license, does the vendor clear with ITD the reason the license is suspended and if it is clear, then it could be given to them immediately. **Mr. Pemble** confirmed this. The cost for a duplicate license does not change and remains at \$11.50.

Rep. Roberts asked if other than the \$2,500.00 savings on postage outlined in the fiscal note, is there some other fiscal impact of duplicate licenses versus a reinstatement? **Mr. Pemble** stated that the number of licenses suspended doesn't always reflect the number of those reinstated, actually it is less. A number of people wait for the time out (3 yrs) and then they won't have to pay the reinstatement fee. **Mr. Pemble** said the fiscal note is not about getting extra money for the department. **Rep. Roberts** asked what the reinstatement fee is. **Mr. Pemble** said that it varies and there is not a flat answer what each person would pay for reinstatement fees, but estimated a ball park figure between \$15.00 and \$300.00 plus.

MOTION:

Rep. Bedke made a motion to send **H356** to floor with a "Do Pass" recommendation. **Motion approved** by voice vote.

H 363

AMEND LICENSE PLATE FEES: **Amy Smith**, ITD reported this proposal increases the license plate fee from \$3.00 to \$4.00. Currently the department retains \$2.50 and \$0.50 goes to the Idaho Heritage Trust Fund. Manufacturing costs have continued to increase and the plate fees have not kept pace. The last increase was in 1992 for the copyright fee to be distributed to the Idaho Heritage Fund. Replacement license plates are currently required every seven (7) years.

MOTION:

Rep. Smith(24) made a motion to send **H 363** to the floor with a "Do Pass" recommendation.

Rep. Hagedorn asked where it is noted to change the plate replacement cycle from seven (7) years to ten (10) years. **Rep. Moyle** stated he had asked about having this information written up and while it is last minute, he just received it himself and wanted the committee to have it also. This shows the costs if the plates were changed to a ten (10) year cycle. **Rep. King** asked if they were able to find out if the reflected material will last ten (10) years. **Julie Pipal** of ITD stated she doesn't have the list of states who have a ten (10) year replacement cycle with her, however, 3M has guaranteed the paint for five (5) years. The states are all over the board with replacement cycles anywhere from two (2) to twelve (12) years and it was not tied to what 3M guaranteed. It was noted that previously there was an effort by the legislature to move the replacement cycle to ten (10) years and seven (7) years was the compromise. **Chairman Wood** said she remembers when that occurred and the Idaho State Police (ISP) came in and were vocal about not going more than seven (7) years. It was asked if others can bid for this process? **Ms. Pipal** said the contract is through Correctional Industries not ITD and 3M received the bid for the digital process. **Rep. Moyle** asked how long the contract with Correctional Industries is. **Ms. Pipal** said they are in the first year of a five (5) year contract. **Rep. Moyle** asked if the contract required us to use 3M and do other companies guarantee their paint. **Amy Smith** said that Correctional Industries can contract with whomever they want, as long as the company meets the requirements. **Rep. Nonini** asked **Chairman Wood** if she can remember when the seven (7) year license plate cycle came into effect. **Chairman Wood** said to the best of her recollection it was about eight (8) years ago. **Rep. Nonini** asked **Ms. Pipal** if with the advances in technology the paint is more advanced now than previously. It was answered that there has been improvement in their paint. **Rep. Hagedorn** asked **Ms. Pipal** if law enforcement has the ability to ticket or stop a vehicle with a plate that is not reflective enough or does not display the numbers well enough. **Ms. Pipal** said she doesn't know whether they do or not, but Idaho Code requires license plates to have 75' of visibility. **Rep. Hagedorn** asked **Chairman Wood** if it was appropriate to look at the number of vehicles ticketed for non-reflective license plates through the system and if it was changed to ten (10) years, see if that number increases over time or remains the same. **Chairman Wood** said they could, but some other factors may skew whether it is from non-reflective plates, but they could make a request. **Rep. Roberts** asked **Ms. Smith** if in the future there was a potential amendment to this bill or new legislation to go to a ten (10) year cycle would it affect the cost analysis projection. **Ms. Smith** stated that the requested \$1.00 increase should sustain them for the time being, but depending on the costs charged from Correctional Industries and the cost of aluminum, they could come back with additional increase requests.

Rep Moyle commented he was not going to make a motion to amend this bill, however he thinks it would be wise to adjust the year length cycle in the future. Also that ITD should look at the big picture and not nickle and dime fee increases, i.e. increases for plates, fuel gas increase and registration fees, which all pertains to additional revenue for ITD and costs the consumer more money.

Chairman Wood asked for further debate and there being none, the committee voted. **Motion approved** by voice vote.

H 365

INCORPORATION OF THE "FEDERAL MOTOR VEHICLE SAFETY STANDARDS" INTO IDAHO'S VEHICLE

REGISTRATION CODE: **Amy Smith**, ITD reported to the committee this bill incorporates the Federal Motor Safety Standards into the Idaho Vehicle Registration Code. This prohibits registration of unsafe vehicles that cannot or do not meet the Federal Motor Vehicle Safety Standards. Ms. Smith said that some imported vehicles not intended for use on public roads (i.e. midget race cars, sand rails, rock crawlers) come into the U.S. in parts and then are assembled here and do not meet standards. After Ms. Smith's presentation, **Chairman Wood** asked for questions from the committee. **Rep. Hagedorn** asked Ms. Smith if she had a copy of the code and paperwork that an individual would need to have to self-certify their vehicle. Ms. Smith handed him the information.

Rep. Hagedorn asked if what we are saying is that an individual has to go through all of the paperwork she just handed him to self-certify their vehicle. **Ms. Smith** said there is a shorter list within the list with extraneous information and that they would need to know what is expected of them when self-certifying their vehicle.

Chairman Wood asked if when someone buys parts for their vehicle if the store and salesman would know what was needed for the individual to comply. **Ms. Smith** said that there are DOT conversion kits available that have equipment that can be purchased and put on bikes to be street legal. **Rep Hagedorn** asked if there are EPA requirements. **Ms. Smith** said there are EPA requirements, but not within Idaho's Code. **Rep Nonini** asked Ms. Smith the difference between motor driven bike and a motorcycle. **Ms. Smith** said that a motor driven bike is a smaller version and has few requirement than a motorcycle.

MOTION:

Rep. Wills made a motion to send **H 365** to the floor with a "Do Pass" recommendation. A voice vote was taken with **Rep. Shepherd(2)** asking that her "Nay" vote be recorded. **Motion approved** by voice vote.

PRESENTATION

IDAHO ASSOCIATION OF COUNTY ENGINEERS AND ROAD SUPERVISORS (IACERS): **David Babbitt**, member of the legislative committee for IACERS and the Public Works Director for Bingham County reported there are a lot of entities that deal with highways and associations and each have their own ideas. There are 290 local highway districts in Idaho and today he wants to present their viewpoint. There are 33,382 local highways that the

jurisdictions maintain. Road miles maintenance is increasing and funding from ITD is decreasing. The objective of his visit today is to present where their funding comes from and show that per mile distribution divided between highways has gone flat. Costs are soaring, bridges are deteriorating and they have recommendations on the formula used to distribute funds, and to be sure local highway districts get their fair share. Currently fifty-seven percent (57%) of funding is distributed to the ITD, thirty-eight percent (38%) to local highway districts and five percent (5%) is distributed to the Idaho State Police. Ten percent (10%) of the money is taken and divided equally between the forty-four (44) counties, however some counties do not have local highway districts. Per miles distribution is declining as the road miles increase, dividing the pie into smaller pieces. Another part of the formula is vehicle registration in the forty-four (44) counties. **Rep Smith(24)** stated that all highway districts, by statute, are able to levy up to two (2) to three (3) mills and asked where that appears in Mr. Babbitt's presentation and if he knows how many highway districts utilize mill levies. **Mr. Babbitt** said he doesn't have the amount of mills each district is allowed to levy. It was noted that counties also are able to place mill levies. **Mr. Babbitt** stated that he selected a few counties and compared their income to the ITD income and pointed out it was 6 to 1. **Rep. King** asked if the roads in the Oakley Highway District aren't primarily dirt roads. **Rep. Bedke** stated they have a mixture of roads, but that a lot of them are gravel roads. **Rep King** asked Mr. Babbitt about comparing a bigger highway with a gravel road. **Mr. Babbitt** said that the range is about fifty percent (50%) oil and fifty percent (50%) gravel across the state. **Mr. Babbitt** noted that even with less vehicle registrations, the highway district still has miles of roads to maintain.

Mr. Babbitt reported that there are 1,761 bridges in the state system, with bridges being designed to last an average of 50 years. Currently 339 bridges are older than 50 years and an additional 518 bridges will be over the 50 year mark within the next 10 years. There will be structural and potential liability problems if proactive steps aren't taken. **Mr. Babbitt** stated there has been a dramatic increase in the cost of construction since 2003 and since 2005 all construction has declined with the exception of highway construction. As revenue goes flat and costs continue to increase, they are not able to maintain their systems. **Rep. Mortimer** said while taking a tour with ITD last year, one thing they brought to his attention was that a lot of state highways go through cities and counties and are bypassed by federal highways. It occurred to him there is no reason for those roads to then continue as state highways and could be maintained by county and cities. Could there be some agreement so that cities and counties can take back roads that are no longer state highways and increase the funding to local jurisdictions. **Mr. Babbitt** said that is correct on a general basis, but cited an example of a high bridge in northern Idaho where there are only 4,000 people in the county. They have to maintain the bridge on their own funds and the costs to repair the bridge goes through federal funding, as they don't have enough money. **Rep. Mortimer** said that from what he was shown, that

even with special exceptions the state would be further ahead to subsidize counties on a project by project basis. **Mr. Babbitt** said that was a fair statement and possibly should focus federal funds into specific areas where all of the regulations don't apply. **Rep. Mortimer** asked Mr. Babbitt if he would be willing to serve on a task force to look at this and **Mr. Babbitt** said he and others in his organization would be willing to do so. **Rep. Ringo** asked Mr. Babbitt how much of the efficiency using local money has to do with the regulations on how much individuals have to be paid for their work. **Mr. Babbitt** said that it was not so much wages, but environmental regulations and a variety of other issues make up the biggest portion. **Rep. Ringo** asked if local employees receive Davis Bacon reimbursement. **Mr. Babbitt** said that local employees do not receive Davis Bacon wages, but contractors do. **Mr. Babbitt** stated that maintenance is cheaper than reconstruction and in order for the local districts to stay within budgets, they are not replacing bridges that need to be replaced, not chip sealing roads, safety improvements are being delayed or ignored, and not replacing retiring employees. It costs approximately one million dollars to rebuild a mile of road. The bottom line is that local districts prefer to have money without federal strings attached, the division of money needs to be reevaluated, all roads are deteriorating, and more funding is needed at the local highway jurisdiction level. **Chairman Wood** thanked Mr. Babbitt for his excellent presentation.

Chairman Wood reported that due to some committee members having to leave to attend Education Committee Meetings, a quorum is no longer present and that the rest of the agenda will be taken up at a later meeting.

**H 338, H339 and
H371**

Chairman Wood asked Lt. Col. Dahle if he would be able to come back to make his presentations on these bills at a later meeting. **Col. Dahle** said that would be fine. **Rep. Ruchti** said he recalls talking about the rulemaking process in another meeting and how it applies to government agencies. Col. Dahle had been asked what they wanted to use rulemaking for and Col. Dahle had replied nothing specific and suggested that he talk to someone about rulemaking. **Chairman Wood** said Dennis Stevens had made himself available and was more comfortable with Col. Dahle's request.

H 336

Rep. Ruchti said that a number of people are here to testify regarding this bill and worried if the date was changed, they will not be able to come back. **Chairman Wood** said as there is no longer a quorum, the committee can take testimony but cannot vote. **Rep. Ringo** stated the nature of the testimony is valuable in order for the committee to vote and that for at least one member of the audience, Maria Andrade, this is her only opportunity to testify as she is going to be gone the next several weeks. **Rep. Hagedorn** recommended on waiting and having the public testimony when more committee members are present, so they can hear the testimony before voting.

Chairman Wood ruled to consult with the committee secretary to see what the schedule would be for the meetings next week and that there would be at least 24 hours advance notice of the date scheduled. **Rep Hart** stated that if anyone couldn't make the scheduled meeting, they can submit their testimony in writing or have someone read it at the meeting for them.

ADJOURN: Chairman Wood adjourned the meeting at 3:13 p.m.

Representative JoAn Wood
Chairman

Darlene Reed
Secretary

MINUTES

HOUSE TRANSPORTATION AND DEFENSE COMMITTEE

DATE: January 28, 2008

TIME: 1:30 p.m.

PLACE: Room 148

MEMBERS: Chairman Wood, Vice Chairman Hart, Representatives Smith(24), Roberts, Bedke, Wills, Moyle, Mortimer, Hagedorn, Shepherd (2), Ringo, King, Ruchti

**ABSENT/
EXCUSED:**

GUESTS: See attached sign-in sheet and highlighted presenters below.

**CALL TO
ORDER:** Chairman Wood called the meeting to order at 1:32 p.m.

H 338

AUTHORIZE THE MILITARY DIVISION TO PROMULGATE

ADMINISTRATIVE RULES: Lt. Col. David Dahle presented the bill to the committee and said it will allow the military division to promulgate rules. They would bear the costs and this will allow them to develop rules on how they do business directly within their organization and they will hold themselves accountable to a higher standard. **Chairman Wood** said that there's usually a germane committee that looks at the rules and assumed it would be this committee. **Col. Dahle** stated that is correct.

MOTION: **Rep. Bedke** made a motion to send **H 338** to the floor with a "Do Pass" recommendation.

Chairman Wood called for discussion. **Rep. Ruchti** asked Col. Dahle what would stop the Attorney General (AG) from promulgating under policy what was done under rule. **Col. Dahle** stated that currently the AG promulgates all kinds of policies internally and by elevating themselves above policy to rulemaking it will make them have more accountability, as rulemaking is more defensible than policies done by an AG signature. It makes sense for them to do this, i.e. request legislative change through rulemaking and then if they are turned down can still have AG implement the change through policy.

Rep. Ruchti said that he agrees with those thoughts on using rules to make what the military division sets forth as more defensible, but he's hearing if the legislature rejected the rule because it was inappropriate for some reason, the AG would then promulgate under policy what they didn't do under rule.

Col. Dahle said he may have misunderstood the question. The AG would recommend that be taken into account when they develop informal policies in the military division. **Rep Hagedorn** asked how would the interaction be with Inspector General (IG) and rulemaking policy. If a guard member didn't believe a rule was proper, how would the AG handle it. **Col. Dahle** said they have an active duty IG sent by the U.S. Army and his stewardship is to look at issues that arise, but he has no jurisdiction over rules promulgated by the military division. They are part state and part federal and looking at a change to promulgate on the state side on how they do business. It is the nature of

how they do business for the Judge Advocates and IG to function fluidly in doing a handoff of the best interests of the military members. **Rep. Hagedorn** asked does the IG report to our AG. **Col. Dahle** said the IG is directly accountable to the AG, has access to the AG at any time and advises the AG on business and compliance practices. **Rep. Hart** said that assuming this legislation gets enacted, what is the policy of the military division in publishing a rule that might be temporary or come before this committee, and having a period of time where the public or soldiers can see the rule, read and understand it and is there anyone other than the immediate chain of command to voice their opinion of the rule to. **Col. Dahle** said he's not sure exactly how this will work, but perceives the question to be that there might be the occasion where the members would not be free to participate in this process, but he doesn't see that happening and will develop a system that will allow them to participate. On the federal side they have a union and they might be interested in helping them with the rulemaking process. **Col. Dahle** said this is new to them so they recognize the process has potential problems and want to work it in a way that doesn't impose on their constitutional process. **Rep. Hart** asked if a soldier went to the IG and talked to him about a rule or proposed rule, is that outside his scope. **Col. Dahle** stated that anyone can talk to the IG about anything and the IG wants to help the AG in that if there is a concern germinating and while it might be somewhat outside his normal scope of duties, it would be something the IG would want the AG to know about. **Rep. Ruchti** commented that he likes the concept of the bill, shared the concerns of Rep. Hart, but as long as the military division is cognizant and willing to create a system where soldiers can express their views about rules, he thinks it will be a good policy.

Chairman Wood asked for any further discussion or comments. There being none, the committee members voted. **Motion approved** by voice vote.

H 339

CORRECTION OF PROBLEMS IN TITLE 46: . **Lt. Col. David Dahle** stated this is old fashioned housekeeping, as many parts of Title 46 of the Idaho Code are very old, and exist back to 19 27. Some of the terms have been replaced or are antiquated, possibly some even predate WWII, and this will combine and make the changes in a consistent manner. **Rep. Smith(24)** asked about the reduction of fifteen (15) days of paid leave to five (5) days and the significance of that. **Col. Dahle** said the change is from fifteen (15) days to one hundred twenty (120) hours, based on an eight (8) hour day, which is what other state employees have. **Rep. Smith(24)** stated he didn't think it should be based on an eight (8) hour work day, as there is nothing to indicate it's not a twenty-four (24) hour day and it could be confusing. **Col. Dahle** said the leave entitlement exists for guard members who are taking leave from their employer in the State of Idaho.

MOTION:

Rep. Bedke made a motion to send **H 339** to the floor with a "Do Pass" recommendation. **Motion approved** by voice vote.

H 371

AMEND THE STATE INTEROPERABILITY EXECUTIVE COUNCIL (SIEC)

AUTHORIZING LANGUAGE: Lt. Col. David Dahle reported this proposal makes a minor change to reflect the relocation of the SIEC from the Bureau of Homeland Security to the military division for purposes of administrative support and governance and takes away the sunset clause. Rep. Roberts asked if anyone signed up to give testimony in opposition or support of this legislation. After checking, it was noted that no one signed up to give testimony on H 371.

MOTION:

Rep. Roberts made a motion to send **H 371** to the floor with a "Do Pass" recommendation. **Motion approved** by voice vote.

H 366

DRIVERS LICENSE AND IDENTIFICATION CARDS EXPIRATION DATES AND ISSUANCE FOR ALIENS WITH LEGAL DOCUMENTATION: Lynn Rhodes

ITD reviewed the proposed legislation noting it deletes outdated references to verification of Social Security Numbers(SSN) by looking at the SSN card, as they are now verified by computer. It prevents the expiration date for a drivers license and identification card to extend beyond the legal presence of an alien in the United States and limits the validity of a drivers license or identification card to one (1) year when documentation does not state an expiration date. Current law requires proof of legal presence when applying for a drivers license or identification card. There are instances where those aliens who were issued identification cards or drivers license continue to renew them long after their legal presence in the United States has expired. An unexpired drivers license or identification card provides the impression that the holder is a legal resident in the United States, which does not support the laws of the United States of the State of Idaho Code

MOTION:

Rep. Smith(24) made a motion to send **H 366** to the floor with a "Do Pass" Recommendation.

Chairman Wood asked for discussion and advised there is a guest who wants to speak to the bill. Rep. Ruchti asked Ms. Rhodes how this bill will affect permanent residents who are here under a legal status but have no documentation to show. Ms. Rhodes stated that pages 7 & 10 speaks to that, as every drivers license issued to a permanent legal resident is the same as for U.S. citizens. Rep. Ruchti asked if there are situations where someone is a permanent legal resident but will not have legal documentation. Ms. Rhodes said that she is unaware of a situation where that would be the case. They have contacts at the Department of Homeland Security, SAVE program and also can verify any documentation by a phone call. Rep. Ruchti asked if ITD has contacted major employers in the state, i.e. Micron, to ask how this will affect any of their legal out-of-the-country employees. Ms. Rhodes said she has not, but if the individuals are here legally, she doesn't see where it would be a problem. Rep. King asked about the SAVE program and how it works, as she knew a woman who was in an abusive relationship and he kept her passport and green cards and asked how could this woman would be able to obtain work, as she would need a drivers license. Ms. Rhodes said they do have an exception process in place to help those in unusual circumstances and they refer them to the Department of Homeland Security for re-issuance of documentation. Rep. King said she thought the person she was referring to might be a refugee versus an alien. Ms. Rhodes said that with a refugee it is usually more convenient as they

generally come with bare minimum of documentation, if any. They rely on those agencies who deal with refugees to provide documentation, and if they are here legally, they would refer them to that refugee agency or contact the agency themselves to help them regain their identification cards, etc.

Chairman Wood asked for testimony. **Kathryn Railsback** introduced herself and said that she is an immigration attorney and had the page distribute a hand out. **Ms. Railsback** said she can understand the appeal for this bill and it is common sense to not issue a drivers license for longer than an alien's legal presence. Once you start looking at how complex the immigration system is, however, you will see there is a real risk that the Department of Motor Vehicles (DMV) will be denying a drivers license to those authorized to work and be here, and will result in a lot of expense and time, not only for the state and federal government, but also Idaho employers, especially those in high tech fields. **Ms. Railsback** said she can speak from personal experience and that Rep. King's example is one out of hundreds of cases who run into terrible red tape, both for individuals and employers. At a time when we are trying to build up the high tech and university systems and bring in computer and research scientists, these are the last people we want to add red tape to. **Ms. Railsback** said in her opinion this bill is overly broad as there are many categories of those authorized to live and work in the U.S. for extended periods of time and she believes DMV is asking for potential liability by leaving this decision making power with clerks. **Ms. Railsback** noted some of the various Nonimmigrant temporary visa categories that apply to individuals in Idaho: H1V; F; J; H-1B; H-2; L; and TN. Some categories have a clear definition of how long they will be here, but some do not. **Ms. Railsback** stated that if her understanding of this bill is correct it is a waste of money to issue a drivers license every year to those whose status is unclear and it will add delays at DMV while clerks and supervisors take additional time to verify documents and individual's status in the U.S. **Ms. Railsback** stated that green cards have gone through many variations; there is an effort to standardize them for ten (10) years and the number of visas issued each year is limited by Congress. **Chairman Wood** asked why others were not here today, i.e. representatives from Micron, and if it is better that they have REAL ID or that we comply with the Department of Homeland Security so that we will not have to have REAL ID if it can be handled within our state. The responsibility lies with legal aliens to meet the requirements to get drivers licenses and/or identification cards, so that the rest of us don't have to pay the price and have REAL ID. **Ms. Railsback** said that Micron counsel is out of town and some individuals were here last week but couldn't return this week and that she is not qualified to speak to REAL ID. It was noted that's why ITD is proposing this legislation as they do know about REAL ID, there is resistance among Idaho citizens to REAL ID, and ITD is trying to comply with the Department of Homeland Security so we can use our state law to sort out who is here legally and who is not. If REAL ID is implemented, aliens would still have to go through all of these steps, so which way do we want to go is the decision. **Ms. Railsback** said that possibly the proposed legislation could be reworked. **Chairman Wood** asked Ms. Rhodes if it is true some would have to apply for a drivers license or identification card each year. **Ms. Rhodes** said that it depends on what their documentation says. **Rep. Hagedorn** asked Ms. Railsback for the number of refugees it impacts in the state. **Ms. Railsback** said she doesn't know, but could find out. **Rep. Hagedorn** asked for a

guesstimate. **Ms. Railsback** said she would guess in the thousands. It was noted those coming into the U.S. have to work with the Department of Homeland Security to come into the country. **Ms. Railsback** said the problem is the quality of documents and not having a uniform documentation system. **Rep. Ruchti** asked Ms. Rhodes to address the fiscal note: has any other state implemented this; what the fiscal note for other state's legislation is; and what would \$5,200 do for the ITD to train clerks. **Ms. Rhodes** said the \$5,200 is an estimate of possible programming costs for ITD. ITD would probably have someone who is already an employee do the programming changes, which involve changing the system so clerks have the ability to enter expiration dates differently than what they have now and add a few fields for comments. As for other states' costs, she doesn't have that information. **Ms. Rhodes** said that this morning she read an email from the American Association of Automobiles and it reported that Michigan and Kansas have implemented similar legislation and this is the general trend of the nation. As far as DMV clerks, **Ms. Rhodes** stated they deal with these issues every day and are not unfamiliar with all of the different status categories. The clerks have reference materials on hand and have contacts with the various agencies, if needed. DMV is not intentionally trying to deny identification cards or drivers licenses to individuals. **Rep. Smith(24)** said he wished to comment in support of the motion and that he was impressed with the confusion ITD may have every time someone comes in with questionable documents, so thinks an annual renewal is fine. This may prompt the Department of Homeland Security to put something with an expiration date with the paperwork. **Rep. Ruchti** asked to speak in opposition of the motion as he thinks this is casting too wide of a net and will catch some who are unintended and shouldn't have to go through this long process, while forcing others to stand in line while DMV is checking on their status. **Rep. Ruchti** said he doesn't think the fiscal note adequately represents the costs in training clerks on different types of visas, doesn't think it improves government and will vote against it. **Rep. Hart** asked to speak in favor of the motion and stated he thinks oftentimes we deal with and think about efficiency, but when the issue is the security of our state and communities, that is the primary issue. **Rep. Hart** said this bill is positive in terms of securing our borders, communities and state, and is good legislation. The weak part seems to be the federal immigration system, not DMV, and if we pass this legislation it may help facilitate immigration to clean up their documents. Lastly if there are any real obvious problem areas, **Rep. Hart** said he foresees ITD coming back next year to address this. **Rep. Ringo** asked Ms. Rhodes if the proposed legislation was run by the Attorney General's office before bringing it to the committee. **Ms. Rhodes** stated, yes, they did. **Rep. King** said she wishes to speak in opposition of the bill, as she thinks people will drive without a drivers license because they don't know to go into the DMV or are too busy. **Rep. King** said she thinks it is a very time consuming process and forces aliens to have to rely on the goodness of other folks in the meantime and regardless of their status thinks aliens should have drivers licenses for the safety of the citizens. **Chairman Wood** asked for other discussion or comments.

Hearing no other discussion, **Chairman Wood** called for the vote. **Representatives Ringo, King and Ruchti** voted "Nay" and asked their votes be recorded. **Motion approved** by voice vote.

S 1259 **NAME CHANGE ON LICENSE PLATES:** Rep. Diana Thomas reported the name change is for a license plate that is already part of our system. The College of Idaho was changed sixteen (16) years ago to Albertson College of Idaho and it has now been changed back to the College of Idaho. This program allows those who want to donate money back to the college through the license program to do so. This is not a new license plate and won't require those who currently have it to go and get a new one.

MOTION: **Rep Roberts** made a motion to send **S 1259** to the floor with a "Do Pass" recommendation. **Motion approved** with a voice vote.

H 365 **INCORPORATION OF THE "FEDERAL MOTOR VEHICLE SAFETY STANDARDS" INTO IDAHO'S VEHICLE REGISTRATION CODE:**
Chairman Wood reported that at the last meeting the committee had made a recommendation to send the bill to the floor with a "Do Pass" recommendation, and that the Speaker of the House referred the bill back to the committee for further discussion. **Julie Pipal**, ITD stated that on page 8, line 33 the way it was worded would put law enforcement in the position of not being able to enforce DUI's. **Ms. Pipal** said she spoke with the Deputy Attorney General and he suggested the language before the committee, which would allow the distinction to be made for law enforcement. The amended language will read: " (g) Motor Vehicle. Every vehicle which is self-propelled, and for the purpose of titling and registration meets federal motor vehicle safety standards as defined in section 49-107, Idaho Code. Motor vehicle does not include..."

MOTION: **Rep. Moyle** made a motion to send **H 365** to general order with the amendment attached.

Rep. Moyle stated that there are no committee amendments, so when this goes to general orders it's free game and they can do what they want. **Chairman Wood** asked ITD to explain the part about ATV's on page 11, line 7. **Ms. Pipal** said in the discussion with the Deputy Attorney General they discussed about a conflict in code and he said he doesn't believe there is a conflict because of the language in lines 48 and 49.

Motion approved by voice vote.

Chairman Wood announced that the Idaho Highway Users are conducting their Annual Legislative Reception/Luncheon on Tuesday, Feb 5th, and invited the committee members to attend. They are asking for an RSVP at 383-6471 no later than today.

ADJOURN: There being no further business before the committee, **Chairman Wood** adjourned the meeting at 2:48 p.m.

Representative JoAn Wood
Chairman

Darlene Reed
Secretary

MINUTES

SENATE TRANSPORTATION COMMITTEE

DATE: March 6, 2008

TIME: 1:30 p.m.

PLACE: Room 211

MEMBERS PRESENT: Chairman McGee, Vice Chairman Hammond, Senators Keough, Geddes, Little, Corder, Heinrich, Langhorst, and Sagness

MEMBERS ABSENT/ EXCUSED: None

GUESTS: *The sign-in sheet, testimonies, and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.*

CONVENED: **Chairman McGee** called the meeting to order at 1:30 p.m. and asked the secretary to take a silent roll call.

MOTION: **Senator Corder** moved to approve the minutes of February 5 and 7, 2008. The motion was seconded by **Senator Heinrich**. The motion carried by **voice vote**.

H 463: **Relating to Special Motor Vehicle License Plates**; amending *Chapter 4, Title 49*, to establish the Natural Resources and Mining Education Special License Plate Program.

Representative Mary Lou Shepherd explained that this legislation is to provide for a speciality license plate for the Natural Resources Education Outreach program. The license plate will be a picture of a miner and children. This program teaches educators of K through 12 how important mining is to everyday activities and to be able to speak to it in their classrooms. Any funding from the plate shall be used for supplies and expenses for those teachers who attend the four day classes. Representative Shepherd gave examples of educational materials that this will fund. There is no fiscal impact to the State.

Senator Sagness said he believes that this education is wonderful because it will help develop awareness about the natural world for children which will help them all their lives. He asked if Representative Shepherd has any idea about the market potential for this license plate? **Representative Shepherd** said she has had many people call requesting the license plates and requesting specific numbers. She said numbers cannot be saved for individuals. There has been a lot of interest.

MOTION: **Senator Heinrich** moved to send **H 463** to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Sagness**. **Senator Geddes** disclosed a conflict but stated he would vote. The

motion carried by **voice vote**. **Senators Corder, Little and Geddes** voted nay.

S 1460: **Relating to Temporary Registration of Vehicles and Combination of Vehicles;** amending Section 49-432, to increase temporary permit fees and to provide for application of certain permit fees to an annual registration if the annual registration is purchased within thirty calendar days of issuance of the permit.

Senator Corder said there is nothing new to present about this bill since the print hearing, but to review, this bill doubles the fee for temporary permit fees and allows those registering within 30 days to receive credit for that fee against their registration. There is no fiscal impact on the State's general fund.

MOTION: **Senator Little** moved to send **S 1460** to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Hammond**. The motion carried by **voice vote**.

H 365: **Julie Pipal**, Legislative Liaison for the Idaho Transportation Department, explained that this proposal incorporates the Federal Motor Vehicle Safety Standards as prescribed by the National Highway Traffic Safety Administration into Idaho's motor vehicle registration code.

Ms. Pipal said these amendments are needed to clearly define that only vehicles which are certified to meet the federal motor vehicle safety standards will be allowed registration to operate on Idaho's public roads.

She stated this proposal will prohibit the registration and operation of unsafe vehicles that do not meet these federal safety standards such as toy scooters, motorized skateboards, mini motorcycles and similar types of vehicles. This legislation does not impact the current exception of the registration of all-terrain vehicles (ATVs). It also allows motorbikes to be converted to street legal motorcycles through the use of Federal Department of Transportation (DOT) approved conversion components.

Supporting documents related to this testimony have been archived and can be accessed in the office of the Committee secretary [see Attachment 1]

Senator Little said the way he understands this bill is that the federal government requires that vehicles operating on roads that the federal government subsidize pass some safety standards, and that is what this does. He asked if that is correct. **Ms. Pipal** said that is correct. **Senator Little** said the bottom line is that there are individuals who currently have a license for their ATVs who won't have a license as a result of this legislation. **Ms. Pipal** said if the federal government were to come in and audit, they would find that Idaho has an exception for ATVs and that Idaho is probably in violation of federal code. However, this bill will take care of everything else. **Chairman McGee** asked if this excluded ATVs. **Ms. Pipal** said that is correct. **Senator Little** asked if this bill makes Idaho compliant with federal code. **Ms. Pipal** said with the exception of ATVs.

Senator Langhorst asked if this prevents the people who currently have

an ATV with a license plate on it from renewing that license plate. **Ms. Pipal** said that no, it will not.

Senator Little asked if the federal government is alright with the fact that this code allows Idaho to say that these vehicles are not going to meet the safety standard. **Ms. Pipal** stated that if Idaho was audited they would probably find what ITD has proposed here lacking because we have not addressed ATVs which are not federal vehicle safety standard compliant, nor were they ever manufactured or intended to be used on public roads. However, because of the political climate and because ITD really needs this clarified for rural areas where they are getting all kinds of things on roads that don't have that certificate that says federal motor vehicle safety standard compliant, this allows them to properly title and register those vehicles that do meet the federal motor vehicle safety standard. This legislation provides an exception for ATVs because there is great concern about the fact that we currently issue plates on them today and there is a county by county decision making process that happens on where those vehicles can operate.

Senator Little asked about the reciprocity with other states. He said there is some concern about taking an ATV into Oregon or Utah without a license. He asked if every state licenses ATVs even though the federal government doesn't want them on the roads. **Ms. Pipal** said in the preliminary research they have done they found that each state does it differently. Her understanding from the users is that if ITD gives them a plate, that is all they need in another state. When they come to Idaho, if they have a plate on the ATV, they can operate.

Steve Frost, Recreation Resources Bureau Chief for the Idaho Department of Parks and Recreation, said that other states will allow Idaho ATV users to ride in their states if they have a license plate.

Senator Little asked if someone from another state comes in with their license plate on an ATV, is there also reciprocity on the park's permit. **Mr. Frost** said yes, statute allows 30 days.

Ms. Pipal referred to page 11, Section 49-402 (8), and in Section 49-402 (3) where the bill uses "and" to include ATVs. The intent was to keep "and" in there to include ATVs.

Vice Chairman Hammond asked what does this do to classic cars and hot rods that don't necessarily meet that safety standard. **Ms. Pipal** said this does not effect those vehicles built prior to the federal motor vehicle safety standard being put in place. Vehicles are only required to comply with federal motor vehicle safety standards for the year in which the vehicle was made.

Senator Little said the part of the code that **Ms. Pipal** referred to was referring to registration. He asked if this part of the code says they are allowed to drive on the road. **Ms. Pipal** said this has been reviewed by their legal counsel and the language was inserted so that ATVs were not touched.

Senator Little asked about liability insurance for ATV operators and

whether they are or are not licensed to be operating on the road. **Ms. Pipal** said she understands that there are concerns in the insurance industry with regard to that question. From an enforcement standpoint these vehicles are intended to be operated off road. She said she knows from those who have an exemption, such as an agricultural exemption, that ISP officers have given people tickets for driving ATVs on State highways. So it is an enforcement issue. If someone is operating that vehicle and it is not expressly provided for in that county they can still get a ticket.

Senator Corder said this bill would at least provide consistency from county to county. **Ms. Pipal** said this will provide consistency for the other types of vehicles. This does not in any way effect consistency across counties as to what those individual counties will do.

Vice Chairman Hammond said essentially this bill is trying to prevent any person from building a vehicle on his own which doesn't meet safety standards and licensing that vehicle. **Ms. Pipal** said it is to provide clarification for the public for county offices as to what will be titled and registered. It is very clear that the person who does what Senator Hammond just said cannot title and register the vehicle.

Senator Little referred to another bill that is coming on this issue and said he would like to see a process where there is only one tag instead of two. **Ms. Pipal** said she was trying not to talk about the other bill because this is really designed to address issues the transportation department has. ITD does not want to put a license plate on anything that doesn't meet federal motor vehicle safety standards. There is an effort by the people working on the other bill to make it consistent. ITD is going to issue plates. They are not going to turn that over; the Department of Parks and Recreation is not going to start issuing license plates. ITD will continue to do that and then provide that people can get the annual renewal for Parks and Recreation at regular vendors. They can come to the county office and get everything they need. The only problem with that is that the county office hours are from 8 a.m. to 5 p.m. Monday through Friday.

Senator Little said motor driven cycles which comply with federal motor vehicle safety standards is the new language. He asked what the difference is between motor cycles and motor driven cycles. **Ms. Pipal** said she believes that is the difference between the output. In order to be defined as a motor cycle you have some output, but motor driven cycles would have turn signals, headlights, tail lights, but might be more of a scooter.

MOTION

Senator Hammond moved to send **H 365** to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Keough**. The motion carried by **voice vote**.

H 526aa

Relating to Scrap Dealers; amending Section 54-2702, to revise the content of records required for purchases of scrap for ten dollars or less.

Representative Robert Schaefer said this is a simple bill. He stated there is in law a requirement that every purchase of scrap be recorded and be retained. Scrap dealers would like to be excused from keeping

records on small purchases. He said these aren't necessary to tracking criminal activity because of the small dollar amount involved. There is no fiscal impact to the State or local government.

Senator Corder asked why this bill changed from \$20 to \$10.

Representative Schaefer said Idaho Power and Mike Kane wanted him to pull the bill because Mr. Kane felt the original \$20 figure was too high. They agreed to the \$10 figure.

MOTION

Vice Chairman Hammond moved to send **H 526aa** to the Senate floor with a do pass recommendation. The motion was seconded by **Senator Little**. The motion carried by **voice vote**.

ADJOURNMENT

Chairman McGee adjourned the meeting at 2:25 p.m.

Senator John McGee
Chairman

Lizzie Kukla
Secretary